

REMARKS

Claims 8-16 and 20-29 are pending. Claims 1-7 and 17-19 are cancelled without prejudice or disclaimer of the subject matter therein as being drawn to un-elected inventions. Claim 13 is amended to correct a typographical error. Claims 20-29 are new claims. Reconsideration of the application is respectfully requested in light of the following remarks.

Objection to the Drawings

The drawings were objected to under 37 CFR 1.83(a) as not showing bone fragment attachment apparatuses. However, these are shown at least in Fig. 1, although described in the specification as compound moveable joints. For clarification, this paper includes an amendment to the specification to add a recitation of bone fragment attachment apparatus. Applicant respectfully requests that the Examiner withdraw the objection.

Rejection under 35 U.S.C. §102

Claims 8-12 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,250,417 ("Ettinger"). Applicant traverses.

Claim 8 is a method claim directed to determining a position of a deformity-correcting fixator. The recited steps include:

- a) characterizing a mounting condition for a proximal bone fragment attachment apparatus and a distal bone fragment attachment apparatus;
 - b) determining a first set of fixator characteristics, wherein the first set of characteristics correspond to physical dimensions of the fixator;
 - c) determining a deformity correction matrix by solving a plurality of simultaneous equations, wherein the equations correspond to kinematic equations;
 - d) solving for a second set of fixator settings by equating the deformity correction matrix to a deformity correction transform;
- and

e) reconfiguring the deformity correcting fixator based on the second set of fixator settings.

Ettinger does not disclose all the recited steps in claim 8 and therefore does not anticipate claim 8. For example, Ettinger does not disclose at least steps c)-e) as recited. Although Ettinger discloses a fracture reduction device, it does not disclose it being used in the manner claimed to determine its position. For a teaching of the claimed method, the Office Action references p. 2, right column, lines 35-40 in Ettinger. This cited portion states:

The screw-supporting arms 29 are therefore adjusted so that one is parallel with the axis of the fragment A, while the other is parallel to the axis of the fragment B.

The above quote does not disclose how the positions might be determined. Claim 8, on the other hand, recites a method of determining a position of the fixator using a more predictable and accurate system. This teaching in Ettinger fails to disclose the steps of claim 8, including determining a position that includes “c) determining a deformity correction matrix by solving a plurality of simultaneous equations, wherein the equations correspond to kinematic equations; d) solving for a second set of fixator settings by equating the deformity correction matrix to a deformity correction transform; and e) reconfiguring the deformity correcting fixator based on the second set of fixator settings.” Accordingly, claim 8 should be allowable over Ettinger. Applicants respectfully request that the Examiner withdraw the rejection and allow these claims.

Dependent Claims

Claims 9-16 depend from add additional features to independent claim 8. Accordingly, these claims should be allowable for at the same reasons that claim 8 is allowable. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection and allow these claims.

New Claims

Claims 20-28 are newly added and recite additional features that distinguish over the cited reference. Applicant respectfully requests that the Examiner consider and allow these claims.

New independent claim 29 is nearly identical to claim 8, but does not include the language “and initial fixator settings” in step (b). It distinguishes over the cited reference for at least some of the reasons discussed above. Applicant respectfully requests that the Examiner consider and allow claim 29.

Conclusion

It is believed that all matters set forth in the Office Action have been addressed and that the pending claims are in condition for allowance. A telephone interview is respectfully requested to discuss any remaining issues in an effort to expedite the allowance of this application. To that end, the Examiner is invited to contact the undersigned at 972-739-6969. Applicant respectfully requests that the Office issue a Notice of Allowance in the next communication.

The Office Action may contain characterizations of the claims and the related art to which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in this or any other Office Action associated with the present application.

Although Applicant believes that no additional fees are due, the Commissioner is hereby authorized to charge any fees required by this paper, or to credit any overpayment, to Deposit Account No. 08-1394 of Haynes and Boone, LLP.


Respectfully submitted,



Dustin T. Johnson
Registration No. 47,684

Dated: 11-8-10
HAYNES AND BOONE, LLP
Customer No.: 46334
Telephone: 972/739-86969
Facsimile: 214/200-0853
R-260829_1.DOC

I hereby certify that this correspondence is being filed electronically with the United States Patent and Trademark Office via EFS-Web on November 8, 2010.


Jan Cleveland